



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/500,213	02/08/2000	Mark G. Schrom	16724-108	2262

36029 7590 03/30/2005

DOCKET CLERK, DM/ANSI
P.O. BOX 802432
DALLAS, TX 75380

EXAMINER

EVANISKO, GEORGE ROBERT

ART UNIT	PAPER NUMBER
----------	--------------

3762

DATE MAILED: 03/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

81

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	09/500,213	SCHROM ET AL.	
	Examiner	Art Unit	
	George R Evanisko	3762	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 March 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 43-56 and 62-78.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

George R Evanisko
Primary Examiner
Art Unit: 3762
7/23/5

Continuation of 3. NOTE: the numerous insertions in the independent claims, such as "portion" and "in the distal end portion", would require further search and/or consideration.

Continuation of 11. does NOT place the application in condition for allowance because: the argument that there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings to provide a redundant connection of the conductor to the electrode through two conductors (such as in Iwaszkiewicz) is not persuasive. Iwaszkiewicz provides two conductors through holes in the lead body to the ring electrode and inherently provides a redundant connection to the electrode. In addition, several other prior art references teach this redundant connection, such as Laske et al, Bartig et al, and Gold (cited in previous action). The argument that Iwaszkiewicz teaches the use of multiple conductors at different levels and therefore teaches away from the claimed use of multiple conductors at the same level is not persuasive since Cobian has multiple conductors at the same level and since Iwaszkiewicz is not used to show multiple conductors at the same level, but only that multiple holes can be provided to provide multiple wires to connect a conductor to the electrode. In almost any combination of two references, divergent teachings can be found, but since the Iwaszkiewicz reference is not used to show a teaching of multiple conductors at the same level, the argument is not persuasive. The argument that the applicant uses multiple conductive links between the conductor and electrode to insure low ohmic coupling between the two is not persuasive since the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). The arguments that the duplication of parts and/or obviousness rejection using the Iwaszkiewicz reference is not obvious with respect to the Applicants invention and that there can not be two such conductors in Iwaszkiewicz that are "spaced about the same distance from a longitudinal axis of the body member" are not persuasive. The previously cited prior art references of Dahl et al (4559951), Winkler (5417208), Vaiani et al (5374285), and Peers-Trevarton (4437474) are four teachings of many that show the use of a duplicate electrode for a second distal band electrode to provide additional therapy to the body using only a single lead and show a first conductor and a second conductor being spiraled along substantially the entire body member at the same distance from a longitudinal axis of the body member (the references additionally show spiraling of the conductors at approximately 45-80 degrees). All four are teachings that show it is obvious to one having ordinary skill in the art to provide a duplicate electrode for a second electrode.